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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
08/855,895	05/12/97	STEVENS D	P-17.95

EXAMINER

PM52/0827

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ART UNIT	PAPER NUMBER
3641	8

DATE MAILED: 08/27/98

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 8/17/98

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-29 is/are pending in the application.
Of the above, claim(s) 5, 10-16, 21-24, and 28-29 is/are withdrawn from consideration.
☐ Claim(s) _____ is/are allowed.
☒ Claim(s) 1-4, 6-9, 17, and 25-27 is/are rejected.
☒ Claim(s) 18-20 is/are objected to.
☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

* The drawings have been indicated informal by applicant.
☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
☐ The specification is objected to by the Examiner.
☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.
☐ received in Application No. (Series Code/Serial Number) _____.
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of Reference Cited, PTO-892 ✓
☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2 ✓
☐ Interview Summary, PTO-413
☐ Notice of Draftperson's Patent Drawing Review, PTO-948
☐ Notice of Informal Patent Application, PTO-152

–SEE OFFICE ACTION ON THE FOLLOWING PAGES–

★ U.S. GPO: 1998-421-632/4

1. Applicant's election of species B (figs. 2a and 2b (directed to a ballistic projectile as the destructive object) in Paper No. 6 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 1-4, 6-9, 17-20, and 25-27 read on the elected species and an action on these claims follow. Claims 5, 10-16, 21- 24, and 28-29 are withdrawn from consideration as being directed to a non-elected species (species A). Claims 5, 21, and 28 are directed to deployment across an opening in the room (figs. 1a and 1b (species A)). Claims 22-24 and 29 are directed to detection of a shock wave (figs. 1a and 1b (species A)).

3. Claims 1-4 and 6-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 6, how is the phrase "at least one rapidly deployable air bag" intended to relate to the at least one rapidly deployable air bag of claim 1, lines 1-2? In claim 6, use of the phrase "ultra-high molecular weight" makes the claim indefinite as to what molecular weights are or are not intended to be included. Terms such as "high" and "ultra-high" only have meaning when used in a comparative sense.

4. Claims 7-8 contain the trademark/trade names "SPECTRA" and "KEVLAR". Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second

paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a material for an air bag and, accordingly, the identification/description is indefinite.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

6. Claims 1, 4, and 25-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Genovese.

Genovese discloses a reactive personnel protection system comprising:

a) an inflatable air bag,	23
b) a gas generating system,	21
c) deployment in response to proximate detection of a ballistic projectile, and	col. 2, lines 33-36
d) a radar-based detection system.	col. 4, lines 40-43;

col. 5, lines 4-6

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Genovese in view of Khandhadia et al..

Genovese applies as previously recited. However, undisclosed is an air bag constructed of polyethylene. Khandhadia et al. teach an air bag constructed of polyethylene, col. 3, lines 61-64. Applicant is selecting and assembling a particular material type for the undisclosed material type of air bag disclosed in Genovese. It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Khandhadia et al. to the Genovese personnel protection system and have a personnel protection system with a particular material type for its air bag.

9. Claims 1-4 and 25-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Cho.

Cho discloses a reactive personnel protection system comprising:

a) an inflatable air bag,	14, 46
b) a gas generating system,	16
c) deployment in response to proximate detection of a ballistic projectile, and	col. 7, lines 18-24

d) a radar-based detection system including 8-20 Ghz col. 3, lines 34-40

10. Claims 17 and 25 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Faye et al. or Nitschke et al..

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 17 and 25 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Caruso et al..

13. Claim 9 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

14. Claims 18-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

15. Claims 7-8 are too indefinite in their current form to make a determination regarding patentable subject matter.

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wales Jr., Karr et al., Jones, and Marlow et al. disclose state of the art personnel protection systems.

17. Any inquiry concerning this communication should be directed to Stephen M. Johnson at telephone number (703)-306-4158.

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